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6 RICHARD GALICIA  
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10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

No. 2:94-CR-0294-WBS

13 Plaintiff,

**PROPOSED ORDER REGARDING  
APPOINTMENT OF COUNSEL**

14 v.

15 RICHARD GALICIA,

Hon. William B. Shubb

16 Defendant.

17  
18 Defendant, Richard Galicia, through his attorney, John Balazs, hereby applies for an  
19 order to expand his appointment to include the filing of a motion under 28 U.S.C. § 2255 and  
20 further proceedings in connection with such a motion. In support of this application, Mr. Galicia  
21 avers as follows:

22 1. On March 12, 1997, after conviction by jury trial, the district court sentenced  
23 defendant Richard Galicia to life imprisonment plus a term of years based on his convictions of  
24 various methamphetamine trafficking and firearm offenses.

25 2. On June 11, 2015, defendant Richard Galicia filed a pro se motion to reduce his  
26 sentence pursuant to 18 U.S.C. §3582(c)(2). In an order filed January 15, 2016, the Court  
27 appointed undersigned counsel to represent Mr. Galicia with respect to his motion.  
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1           3. In reviewing Mr. Galicia's pro se § 3582 motion and presentence report, counsel  
2 discovered that Mr. Galicia has a potentially meritorious § 2255 motion and seeks to expand his  
3 appointment to cover such a motion. Mr. Galicia was initially sentenced to mandatory life  
4 imprisonment based on an Information charging that he had suffered two qualifying felony drug  
5 prior convictions under 21 U.S.C. § 851. Mr. Galicia attached to his § 3582 motion court  
6 documents demonstrating that his two predicate felony drug offenses were reduced to  
7 misdemeanors pursuant to recently enacted California Proposition 47 and Cal. Pen. Code  
8 §1170.18. Document 515, at 3-6. As a result, counsel believes Mr. Galicia may have grounds to  
9 ask the Court to vacate his sentence because his two predicate convictions were converted to  
10 misdemeanors and no longer qualify as predicate felony drug offenses under 21 U.S.C. § 851.  
11 See *United States v. Lavalle*, 175 F.3d 1106 (1999) (the state court vacating defendant's prior  
12 conviction warrants reopening his sentence under § 2255 on the ground that the career offender  
guideline is no longer applicable).

13           4. Although the Court has previously dismissed defendant's prior § 2255 motion in  
14 an order filed March 13, 2009 (document 514), counsel believes a new § 2255 motion based on  
15 the state court's orders reducing his predicate drug felony convictions to misdemeanors would be  
16 timely and would not run afoul of the restrictions against successive § 2255 motions. The state  
17 court's orders reducing the two convictions to misdemeanors were filed May 18, 2015.  
18 Document 513, at 3-6. A § 2255 motion to set aside defendant's sentence based on those orders  
19 thus should be timely if filed within one year of the date of those orders.

20           5. Moreover, because the facts reducing the convictions to misdemeanors were not  
21 present until May 18, 2015, defendant could not have relied on the vacated felony convictions  
22 when he filed his prior § 2255 motion and a new § 2255 motion on this ground does not appear to  
23 be barred by the rule against the filing of successive § 2255 motions without prior authorization  
24 from the U.S. Court of Appeals under 28 U.S.C. §2244(b)(3)(A). See, e.g., *United States v.*  
25 *Hairston*, 754 F.3d 258, 260-62 (4<sup>th</sup> Cir. 2014).

26           6. Because defendant may have a potentially meritorious § 2255 motion, the Court  
27 should grant his instant application to expand his counsel's appointment to include the filing and  
28 litigating of a § 2255 motion on the grounds set forth herein. The CJA panel administrator has

1 authorized counsel to make his request.

2 Respectfully submitted,

3 Dated: February 13, 2016

4 */s/John Balazs*  
5 JOHN BALAZS

6 Attorney for Defendant  
7 RICHARD GALICIA

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## ORDER

IT IS SO ORDERED. However, nothing in this Order should be construed as an opinion on the merits, timeliness, or procedural correctness of defendant's proposed section 2255 petition.

Dated: April 8, 2016

William W. Schubert

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WILLIAM B. SHUBB

**UNITED STATES DISTRICT JUDGE**